

LIEUT. COL. J. W. JACOBS.

L E T T E R

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE SECRETARY OF WAR
SUBMITTING AN ESTIMATE OF APPROPRIATION FOR ALLOW-
ANCE OF CERTAIN EXPENDITURES OF LIEUT. COL. J. W.
JACOBS.

JANUARY 27, 1902.—Referred to the Committee on Appropriations and ordered to
be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, January 24, 1902.

SIR: I have the honor to transmit herewith, for the consideration of Congress, a communication from the Secretary of War, of the 17th instant, submitting a proposed amendment to the army appropriation bill for the fiscal year ending June 30, 1903, looking to the settlement and allowance of certain expenditures made by Lieut. Col. J. W. Jacobs, deputy quartermaster-general, under orders of the Secretary of War, and disallowed by the accounting officers of the Treasury.

Respectfully,

L. J. GAGE, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, January 13, 1902.

SIR: With a view to the relief of Lieut. Col. J. W. Jacobs, quartermaster, from responsibility for an expenditure of \$629.69 made by him in July and August, 1898, upon competent military authority for the entertainment of foreign military attachés with the army in the

field during the Santiago campaign, and disallowed by the accounting officers of the Treasury Department, I have the honor to recommend that an amendment be inserted in the army appropriation bill for the fiscal year 1903, following the clause making provision for "Contingencies of the Army." A draft of the proposed amendment is submitted herewith.

A summary of the action taken in this case by the War Department follows, from which it will be seen that the course outlined above, or an appeal to the Court of Claims, is the only recourse left to Lieutenant-Colonel Jacobs for the settlement of his accounts.

June 4, 1898, the Secretary of War advanced to Major-General Shafter the sum of \$2,000 pertaining to the appropriation "Contingencies of the Army, January 1, 1899," for the entertainment of the representatives of the Governments of England, Germany, Austria, and Russia accompanying the army in the field. The disbursements were intrusted to Maj. J. W. Jacobs, quartermaster, as a bonded officer, rather than to a member of the personal staff of General Shafter, at the request of that officer, commanding the expedition. The accounts of Major Jacobs for the disbursements from this fund were approved by the Secretary of War October 29, 1898.

Expenditures to the amount of \$629.69 in July and August, 1898, were disallowed by the Auditor for the War Department for the reason that "said expenditures were not expressly authorized by law, and on the ground that the presence of foreign military attachés with the army in the field was not necessary or conducive to its successful operations."

May 31, 1899, the Comptroller of the Treasury, by letter to the Secretary of War, stated the facts of the advancement of the \$2,000 to Major Jacobs from the appropriation "Contingencies of the Army, 1899," and of the disallowance by the Auditor for the War Department of \$629.69, and requested to be informed whether the expenditures were made by direction of the Secretary of War; and if so, requested a reference to the law authorizing the same.

Upon this letter the Quartermaster-General reported as follows:

It is the opinion of this office that this expenditure is properly chargeable to the appropriation for contingencies of the Army, as provided in the deficiency act of May 4, 1898, which reads as follows, "For all contingent expenses of the Army not provided for by other estimates and embracing all branches of the military service, to be expended under the immediate orders of the Secretary of War," and that the disallowance of the Auditor should therefore be removed.

The Secretary of War, June 26, 1899, returned the Comptroller's letter, inviting attention to the report of the Quartermaster-General, and requesting in view thereof that the disallowance be removed. July 29, 1899, the Comptroller returned the appeal not sustained.

July 28, 1899, Major Jacobs furnished the Comptroller with a letter from Major-General Shafter confirming the verbal instructions for the expenditures, with the statement that he (Jacobs) "was made disbursing officer for the fund as a disbursing officer to comply with the law; that he merely yielded passive obedience to the orders of his commanding officer," and claimed immunity from error and credit for the expenditure under army regulation 653.

To this the Comptroller replied, August 7, 1899, that—

The regulation requires the authority for the expenditure to be given in writing, and no doubt contemplates that the written order of the commanding officer shall be given prior to or at the time the expense was incurred. The written authority of

General Shafter is dated July 24, 1899. If it is intended that the letter shall be considered as authority upon which to base a charge against him and credit the disbursement to Major Jacobs, the Comptroller is unable to comply with the request, and declines to reopen the accounts for a rehearing.

At the request of Major Jacobs the above correspondence was submitted by the Quartermaster-General to the Secretary of War October 3, 1899, for such action as might be deemed proper in the premises.

January 8, 1900, Major Jacobs wrote to the Quartermaster-General requesting his personal good offices to see him through this matter. He said:

In disbursing the funds no discretionary powers were left to me, as the papers on file will show, and the position of the Treasury officials, if not overruled by the Secretary of War, will work extreme injustice to me in a matter of administration with which the accounting officers have no concern. * * * These funds were supplied to General Shafter by the Secretary of War to be expended for the purposes shown, and I, being merely an instrument in the hands of lawful authority to carry on the work, should, in all equity and justice, have credit for the act.

February 28, 1900, upon the urgent request of Major Jacobs, a summary of the action in the case was submitted to the Secretary of War, with additional evidence as follows, which, it was believed, would show conclusively the propriety and necessity of the expenditure:

Copy of telegram of June 3, 1898, from Major-General Shafter, setting forth the need of the funds and the purpose for which they were to be applied.

Copy of telegram of June 4, 1898, conveying approval of the Secretary of War, and directing that the funds be placed in the hands of a bonded officer instead of a member of the personal staff of General Shafter.

Copy of telegram of June 4, 1898, from General Shafter, asking that the funds be placed to the credit of Maj. J. W. Jacobs, chief quartermaster Fifth Army Corps.

In again calling up the case the Quartermaster-General said:

It is respectfully submitted that, in justice to Major Jacobs, he should have credit for the expenditure, which was properly made under orders of his superiors, he having no discretionary powers in the disbursement of these funds.

It appears to the Quartermaster-General that the point of the Comptroller that "said expenditures were not expressly authorized by law, and on the ground that the presence of foreign military attachés with the Army in the field is not necessary or conducive to its successful operations," ought not to be insisted upon in view of the authority conferred by the deficiency act of May 4, 1898, which reads as follows: "For all contingent expenses of the Army not provided for on other estimates and embracing all branches of the military service, to be expended under the immediate orders of the Secretary of War."

It is possible that, in view of the new light thrown on this subject by the telegrams, copies of which are submitted herewith, the Comptroller may revise his decisions of July 29 and August 7, 1899, and the disallowance of \$629.69 against Major Jacobs, may, as an exceptional case, be removed; and it is recommended that the honorable Secretary of the Treasury be requested to ask that the Comptroller reconsider the case. It is understood that these foreign military attachés were permitted by the Government of the United States, upon the request of their Governments, to accompany our Army. There was no opportunity for them to buy stores at the time in the country invaded by our Army, and there was no law, then nor now, authorizing sales to them of army supplies; hence our Government having allowed them to be with the Army must either supply them with food, as guests, or send them back, or let them suffer, neither of which latter two propositions would comport with the honor and dignity of a great nation.

March 5, 1901, this letter was submitted by the Secretary of War to the Comptroller. April 11, 1901, the Comptroller reaffirmed the former action of his office disallowing the expenditure.

In view of this action of the accounting officers of the Treasury, which seems to be final, the Quartermaster-General advised Major Jacobs, April 11, 1901, that his only recourse seems to be an appeal to Congress. When brought to the attention of the office at the next session of Congress, the Quartermaster-General would recommend relief by a special act of Congress to the favorable consideration of the Secretary of War.

Upon reference to the Judge-Advocate-General of the Army that officer reported, August 7, 1901, as follows:

The Comptroller has suspended the item against Colonel Jacobs, and his action is final, and under section 8, act of July 31, 1894 (28 Stats., 208), is binding upon the Executive Departments. In this state of the case two remedies are available to Major Jacobs, one for the Secretary of War to refer the case to the Court of Claims, the other to submit the matter to Congress. The first is available when the Court of Claims meets at the beginning of its next term, the other at the meeting of Congress. The Secretary of War is powerless to act in the case, and nothing could result from the matter being personally presented to him by Colonel Jacobs at this time.

Respectfully,

M. I. LUDINGTON,
Quartermaster-General U. S. A.

The SECRETARY OF WAR.

[First indorsement.]

WAR DEPARTMENT, *January 17, 1902.*

Approved and respectfully forwarded to the honorable the Secretary of the Treasury, with request that the within communication be transmitted to Congress.

E. ROOT, *Secretary of War.*

Proposed amendment to the Army appropriation bill for fiscal year 1903, to follow the clause making provision for "contingencies of the Army," near the head of the bill.

"And the accounting officers of the Treasury are hereby authorized and directed to reopen the accounts of Lieut. Col. J. W. Jacobs, Deputy Quartermaster-General, and to credit him with the amount expended by him, under orders of the Secretary of War, for the entertainment of the military organizations of foreign governments accompanying the Army of the United States in the military operations before Santiago, Cuba, in 1898."